

**REDACTED – FOR PUBLIC INSPECTION**

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February 21, 2019

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-A325  
Washington, DC 20554

**Re: REDACTED – FOR PUBLIC INSPECTION**  
***beIN Sports, LLC v. Comcast Cable Communications, LLC and Comcast Corporation, MB***  
**Docket No. 18-384, File No. CSR-8972-P**

Dear Ms. Dortch:

Enclosed is the public version of the Objection to Protective Order Access of Comcast Corporation and Comcast Cable Communications, LLC (together, “Comcast”) in the above-captioned proceeding.

Comcast also is serving a copy of this public Objection to Protective Order Access via electronic mail to counsel for beIN Sports, LLC.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,



Michael D. Hurwitz  
*Counsel for Comcast Corporation and Comcast  
Cable Communications, LLC*

Enclosures

cc: Pantelis Michalopoulos, Steptoe & Johnson LLP (via electronic mail)

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
beIN SPORTS, LLC,	)	
<i>Complainant,</i>	)	
	)	MB Docket No. 18-384
vs.	)	File No. CSR-8972-P
	)	
COMCAST CABLE	)	
COMMUNICATIONS, LLC	)	
And	)	
COMCAST CORPORATION,	)	
<i>Defendants.</i>	)	
	)	

**OBJECTION TO PROTECTIVE ORDER ACCESS**

1. Comcast Corporation, together with its affiliates Comcast Cable Communications, LLC (“Comcast Cable”) and NBCUniversal Media, LLC (“NBCUniversal”) (collectively, “Comcast”), respectfully objects to the declaration filed by beIN Sports, LLC (“beIN”) on February 15, 2019 seeking access for beIN’s expert, Mr. Eric Sahl, to Comcast’s Highly Confidential Information that Comcast submitted in its Answer pursuant to the Protective Order in this proceeding.<sup>1</sup> The Protective Order requires that an outside expert or consultant seeking access to a Submitting Party’s Highly Confidential Information not be “involved in the analysis underlying the business decisions of any competitor of the Submitting Party nor participate directly in those business decisions.”<sup>2</sup> Mr. Sahl is both involved in the analysis underlying the

<sup>1</sup> See Letter from Matthew R. Friedman, Counsel to beIN Sports, LLC, to Michelle M. Carey, Chief, Media Bureau, FCC, MB Docket No. 18-384 (Feb. 15, 2019) (“beIN Feb. 15 Letter”) (submitting, inter alia, Mr. Sahl’s protective order declaration); *beIN Sports, LLC, Complainant, v. Comcast Cable Communications, LLC and Comcast Corporation, Defendants Request for Enhanced Confidential Treatment*, Order, DA 19-65 (MB Feb. 8, 2019) (“Protective Order”); Comcast Corporation and Comcast Cable Communications, LLC, Answer to Complaint, MB Docket No. 18-384 (Feb. 11, 2019).

<sup>2</sup> Protective Order Appendix A ¶ 4.

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business decisions of competitors of Comcast and NBCUniversal and participates directly in those business decisions. As a result, he is not eligible under the Protective Order to obtain access to Comcast's Highly Confidential Information, and the Commission should so find.

2. Mr. Sahl's ineligibility to obtain access to Comcast's Highly Confidential Information is attested to by Mr. Sahl himself in his expert declaration that beIN submitted with its Second Complaint in December 2018. As Mr. Sahl states therein:

Since 2009, I have established my own consulting firm and provided strategic advice both to distributors such as CenturyLink and Digicel (supporting both their MVPD and emerging OTT platforms) and to various content programmers (independently owned and operated and otherwise), including Game Show Network (GSN), Hulu, Outside Television, WeatherNation et al. I have advised such programmers in connection with, among other things, dealings with MVPDs. I have thus been afforded intimate views on the industry from both sides of the negotiating table.<sup>3</sup>

3. The "strategic advice" that Mr. Sahl provides to his clients about, "among other things, dealings with MVPDs" is precisely the kind of activity that disqualifies him under the Protective Order from obtaining access to some of Comcast's and NBCUniversal's most competitively sensitive information.<sup>4</sup> Moreover, several of the clients that Mr. Sahl identifies in his testimony compete with Comcast and/or NBCUniversal. Indeed, Comcast is aware that Mr. Sahl has represented CenturyLink – a direct competitor to Comcast – in carriage negotiations with programmers such as NBCUniversal within the last two years (and for several years prior),

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<sup>3</sup> Declaration of Eric Sahl, President, ID Media LLC ¶ 1, attached as Ex. 10 to beIN Sports, LLC, Program Carriage Complaint, MB Docket No. 18-384 (Dec. 13, 2018). The identical language appears in Mr. Sahl's declarations that beIN filed along with its First Complaint, in March 2018, and in its Third Complaint, filed earlier *this month*. See Declaration of Eric Sahl, President, ID Media LLC, ¶ 1, attached as Ex. 9 to beIN Sports, LLC, Program Carriage Complaint, MB Docket No. 18-90 (Mar. 15, 2018); Declaration of Eric Sahl, President, ID Media LLC, ¶ 1, attached as Ex. 10 to beIN Sports, LLC, Program Carriage Complaint (Feb. 5, 2019).

<sup>4</sup> Comcast submitted Comcast's Viewership Analyses and information about NBCUniversal's Affiliation Agreements. Protective Order ¶¶ 3-4; Appendix A Preamble, ¶ 1. Access to this information via a consultant such as Mr. Sahl could give other programmers (or broadcast stations) an unfair advantage in negotiations with Comcast or other distributors, and could give distributors (or broadcast stations) an unfair advantage in negotiations with NBCUniversal or other programmers.

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including related communications within the last year. Mr. Sahl also has directly represented at least one of the programmers he identified in his declaration in carriage discussions with Comcast within the past four years. In other words, he has “participat[ed] directly in [the] business decisions” of these competitors within the meaning of the Protective Order. It is highly likely that one or more of Mr. Sahl’s unnamed clients (“et al.”) also compete (and negotiate) with Comcast and NBCUniversal.

4. Counsel for Comcast has sought to resolve this dispute privately with beIN, without involving the Commission, but to no avail. Counsel for beIN has made certain representations about the scope of Mr. Sahl’s current consulting work that purport to address Comcast’s legitimate concerns but in fact do the opposite.

5. Specifically, counsel for beIN indicated via e-mail on February 20, 2019 that Mr. Sahl is no longer consulting for the clients identified in Mr. Sahl’s declaration, and that he “currently” only consults for [[

]], which counsel for beIN “believe[s] do not compete with Comcast.” But this new representation of Mr. Sahl’s current consulting work, even if accurate, does not render Mr. Sahl eligible to access Comcast’s Highly Confidential Information under the terms of the Protective Order. The [[ ]]

*are* a competitor of Comcast within the meaning of the Protective Order; in fact, [[

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6. Moreover, contrary to the position taken by beIN’s counsel, the Protective Order standard for an outside expert’s access to Highly Confidential Information is not based on an expert’s involvement or participation in competitors’ business decisions at the precise present moment such access is sought, but also duly encompasses recent and/or likely future activities. As Mr. Sahl has reiterated across his multiple declarations, he has positioned himself as someone who regularly provides strategic advice to a wide variety of video programmer and distributor clients (with “intimate views on the industry from both sides of the negotiating table”). This is entirely consistent with Comcast’s own dealings with Mr. Sahl, who represented CenturyLink in negotiations with NBCUniversal within the last two years and has represented programmers and broadcast stations in other prior negotiations with Comcast. In short, based on Mr. Sahl’s sworn statements and Comcast’s own experience, it is likely that Mr. Sahl will resume his consulting for other industry clients (as, indeed, he is *presently* doing for the [[REDACTED]]), even during the pendency of this proceeding, and neither Mr. Sahl nor counsel for beIN has provided any assurances otherwise.

7. beIN would not be unfairly prejudiced by the exclusion of Mr. Sahl from access to Comcast’s Highly Confidential Information. First, beIN did not object to Comcast’s request for a Protective Order in this proceeding, which was filed *after* Mr. Sahl had submitted his declaration. Second, Mr. Sahl filed a reply declaration in beIN’s first complaint proceeding without seeking access to Comcast’s Highly Confidential Information;<sup>5</sup> the protective order in

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<sup>5</sup> See Reply Declaration of Eric Sahl, President, ID Media LLC, attached as Ex. 4 to beIN Sports LLC, beIN Reply to Comcast Answer, MB Docket No. 18-90 (June 4, 2018); *see also* Letter from Georgios Leris, Counsel to beIN Sports, LLC, to Michelle M. Carey, Chief, Media Bureau, FCC, MB Docket No. 18-90 (May 18, 2018) (submitting signed protective order declarations from outside consultants from Brattle Group and Byron Media Inc.); Letter from Georgios Leris, Counsel to beIN Sports, LLC, to Michelle M. Carey, Chief, Media Bureau, FCC, MB Docket No. 18-90 (May 21, 2018) (submitting signed protective order declarations from outside consultants from Brattle Group); Letter from Georgios Leris, Counsel to beIN Sports, LLC, to Michelle M. Carey, Chief, Media Bureau, FCC, MB Docket No. 18-90 (May 30, 2018) (submitting an additional signed protective order declaration from an outside consultant from Brattle Group).

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that proceeding (to which beIN consented) had the identical limitation on outside experts.<sup>6</sup> Mr. Sahl, who has access to extensive information that Comcast has designated as “Confidential” (not “Highly Confidential”) in its Answer to beIN’s Second Complaint, can do the same here. Third, beIN has submitted Protective Order declarations for five other outside experts and consultants in this proceeding to date (all employees of an economics consulting firm);<sup>7</sup> Comcast not only did not object to these consultants, but also waived the five-day waiting period under the Protective Order so that they could immediately access Comcast’s Highly Confidential Information. Above all, beIN would not be unfairly prejudiced by the denial of Mr. Sahl’s requested access to Comcast’s Highly Confidential Information because that request was flawed on its face, given Mr. Sahl’s professional activities and client roster.

8. For the foregoing reasons, Comcast respectfully asks that the Commission find that Mr. Sahl does not meet the standard set forth under the Protective Order to access Comcast’s or NBCUniversal’s Highly Confidential Information and require that beIN withdraw Mr. Sahl’s Protective Order declaration with prejudice.

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<sup>6</sup> See *beIN Sports, LLC, Complainant, v. Comcast Cable Communications, LLC and Comcast Corporation, Defendants Request for Enhanced Confidential Treatment*, Order, 33 FCC Rcd 4641, App. A ¶ 4 (MB 2018).

<sup>7</sup> See beIN Feb. 15 Letter (submitting a signed protective order declaration for an outside consultant from Econ One, in addition to that of Mr. Sahl); Letter from Matthew R. Friedman, Counsel to beIN Sports, LLC, to Michelle M. Carey, Chief, Media Bureau, FCC, MB Docket No. 18-384 (Feb. 19, 2019) (submitting signed protective order declarations for outside consultants from Econ One); Letter from Matthew R. Friedman, Counsel to beIN Sports, LLC, to Michelle M. Carey, Chief, Media Bureau, FCC, MB Docket No. 18-384 (Feb. 20, 2019) (submitting a signed protective order declaration for an outside consultant from Econ One, in addition to an outside counsel).

Respectfully submitted,

A handwritten signature in blue ink, consisting of several loops and strokes, positioned above a horizontal line.

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February 21, 2019

*Attorneys for Comcast Corporation and Comcast  
Cable Communications, LLC*

## VERIFICATION OF FRANCIS M. BUONO

I, Francis M. Buono, have read Comcast's Objection to Protective Order Access and to the best of my knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and it is not interposed for any improper purpose.

Dated: Washington, DC  
February 21, 2019



Francis M. Buono  
*Senior Vice President, Legal Regulatory Affairs,  
and Senior Deputy General Counsel,  
Comcast Corporation*



## CERTIFICATE OF SERVICE

I, Samuel Eckland, certify that on this 21st day of February 2019, I caused a true and correct copy of the foregoing Objection to Protective Order Access to be served by overnight mail (Confidential Version) and electronic mail (Confidential and Public Versions) on the following:

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*Counsel to beIN Sports, LLC*



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Samuel Eckland

February 21, 2019